SUPREME COURT, U. S.

Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1315

LLOYD L. LINDSEY, ET AL.,
Petitioners,

VERSUS

STATE OF LOUISIANA, THROUGH
THE SABINE RIVER AUTHORITY,
Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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STATE OF LOUISIANA, THROUGH
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Respondent's Brief in Opposition to
Petition for a Writ of Certiorari to the
United States Court of Appeals for the Fifth Circuit

MAY IT PLEASE THE COURT:

STATEMENT OF THE CASE:

The factual statement of the case is thoroughly set out in the opinion rendered by the Fifth Circuit, which is reported at 524 F. 2 934, and is Appendix B of the petition for the writ. It is respectfully pointed out that the Fifth Circuit's factual finding was the same as that of the Commission and Special Master, as well as that of the United States District Judge.

These factual findings include the fact that Recreational Site No. 9 had been in the development plans from the commencement of the project in 1961, had never been changed or removed, and was made final as a recreational site nine months before petitioners purchased the property.

Petitioners claim, in their statement of the case, that they never had any official notice that the land in question would be taken for public purposes. However, the facts are (as pointed out by the Fifth Circuit) that petitioners had specific and actual knowledge that the land would be condemned for use as a recreational site some five months *before* they bought the property.

ARGUMENT ON THE QUESTIONS PRESENT:

(A) JURISDICTION:

The question of jurisdiction for the federal court to hear this case was first raised by the Fifth Circuit during oral arguments.

During the proceedings to acquire all the land for the Toledo Bend Project, over one hundred suits were filed condemning land which was eventually flooded, and almost a score of suits were filed to acquire recreational land. All were filed in the United States District Court under the provisions of the Federal Power Act, and more specifically, 16 U.S.C. ¶ 814.

Title 16 U.S.C. ¶ 814 reads as follows:

> "When any licensee cannot acquire by contract or pledges an unimproved dam site or the right to use or damage the lands or property of others necessary to the construction, maintenance, or operation of any dam, reservoir, diversion

structure, or the works appurtenant or accessory thereto, in conjunction with an improvement which in the judgment of the commission is desirable and justified in the public interest for the purpose of improving or developing a waterway or waterways for the use or benefit of interstate or foreign commerce, it may acquire the same by the exercise of the right of eminent domain in the district court of the United States for the district in which such land or other property may be located, or in the State courts. The practice and procedure in any action or proceeding for that purpose in the district court of the United States shall conform as nearly as may be with the practice and procedure in similar action or proceeding in the courts of the State where the property is situated: *Provided*, That United States district courts shall only have jurisdiction of cases when the amount claimed by the owner of the property to be condemned exceeds $3,000."

It is respectfully submitted that the recreational site in this case is certainly a work "appurtenant or accessory" to the dam and reservoir.

This is clearly shown by the fact that the State of Louisiana, in order to obtain the license in the first place, had to make definite commitments to build the recreational sites.

The cases of *Feltz v. Central Nebraska Public Power & Irr. Dist.*, 8th Cir. 1942, 124 F. 2 578, *Chapman v. Public Utility Dist. No. 1 of Douglas Co., Wash.*, 9th Cir., 1966, 367 F. 2 163, and *Court in Oakland Club v. South Carolina Public Service Authority*, 4th Cir. 1940, 110 F. 2 84, all consider this question peripherally, but adequately to allow the court to conclude that a licensee has the power of eminent domain in federal court to condemn lands in fee for recreational purposes, so long as they are appurtenant or accessory to the reservoir.

This is further shown by a reading of Section 2.7, Title 18, Code of Federal Regulations (1975).

This sets forth that the Federal Power Commission expects licensees, specifically, "--To acquire in fee and include within the project boundary enough land to assure optimum development of the recreational resources of the project."

It is respectfully submitted that jurisdiction for this case lies in the federal courts.

(B) ENHANCEMENT OF VALUE:

The primary issue in this case is whether or not the landowner is entitled to be paid the value of the land at its pretaking use as timberland, or the value, as enhanced by the presence of the reservoir, as lakeshore property.

The Louisiana law is plainly to the effect that the landowner is not entitled to any enhanced value attributable to the improvement. This can be seen in *State, Department of Highways v. Tripper Realty Corp.* (La. 1973), 276 So. 2 315; *State, Department of Highways v. Johnson* (La. App. 1962), 141 So. 2 54; *Shreveport Traction Co. v. Svara* (La. 1913), 63 So. 396.

It may also be seen in L.S.A. - R.S. 19:9 and Civil Code, Article 2633, which govern the measure of compensation to be awarded.

As can further be seen, *United States v. Reynolds*, 1970, 397 U.S. 14, 90 S. Ct. 803, 25 L. Ed. 2 12, *United States v. Miller*, 1943, 317 U.S. 369, 63 S. Ct. 276, 87 L. Ed. 336, and *Shoemaker v. United States*, 1893, 147 U.S. 282, 13 S. Ct. 361, 37 L. Ed. 170, all provide for the same basic measure of compensation as does Louisiana law.

Under both the Louisiana law and the federal law, if the recreational site was part of the original Toledo Bend Dam and Reservoir Project, the landowners are not entitled to the enhanced value.

The rule used to make this determination is known as the "scope-of-the-project" test, and is accepted in both the Federal Courts (*United States v. Miller*, supra) and the Louisiana state courts (see: *State, Department of Highways v. Port Properties, Inc.*, La. App. 1975, 316 So. 2 749).

The basic determination to be made under this test is a factual one. At all stages of the proceedings in this matter, the finder of fact has applied this test and found adversely to the landowner.

The Commission and Special Master found that the acquisition of the land for the recreational site was within the scope of the project.

The District Judge agreed with this finding and conclusion of the Commission.

The Court of Appeal, in a very thorough opinion, also agreed.

It is respectfully submitted that those determinations below are correct and that the landowner is not entitled to claim an enhanced value of the land.

(C) PUBLIC RECORDS DOCTRINE:

Finally, the petitioners claim that they are protected by the Public Records Doctrine of *McDuffie v. Walker*, 125 La. 152, 51 So. 100 (1909), and are entitled to the enhanced value of the property thereunder.

This cannot be seriously argued, for, as the Fifth Circuit points out, petitioners *knew* five months before they purchased the property that it would be taken by the Sabine River Authority. They purchased anyway and, thus, cannot be allowed now to argue that they relied on the public records.

Moreover, the question in this case is *value*, rather than *title* which is the issue addressed by the public records doctrine.

CONCLUSION:

It is respectfully submitted that the courts below have decided correctly the issues discussed above.

It is respectfully submitted that, for the foregoing reasons, this petition for writ of certiorari should be denied.

RESPECTFULLY SUBMITTED:

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that three (3) copies of the foregoing brief have been forwarded by mail, postage prepaid, to Mr. James S. Holliday, Jr., attorney for petitioners, P.O. Box 2706, Baton Rouge, Louisiana 70821, on this the 24th day of May, 1976.

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